IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 30607 of 2006(R)

CMA.24/2006 of SUB COURT, SULTHAN BATHERY
OS.102/2006 of MUNSIFF MAGISTRATE, SULTHAN BATHERI

.....

PETITIONERS:

---

1. PANKAJAKSHY, D/O.MADHAVI AMMA,
   MADATHODI VEEDU, MANHAPPARA, AMBALAVAYAL AMSOM,
   SULTHANBATHERY TALUK.

2. PUSHPAVATHY, D/O.MADHAVI AMMA,
   DO. DO.

BY ADV. SRI.S.EASWARAN

RESPONDENTS:

---

1. SMT.KRISHAJA, W/O.RAVEENDRAN,
   THAYYIL VEEDU, MANHAPPARA, AMBALAVAYAL AMSOM,
   DESOM, SULTHANBATHERY TALUK.

2. RAVEENDRAN, H/O.KRISHNAJA, DO. DO.

BY ADV. SRI.PHILIP MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007 ALONG WITH FAO NO.238 OF 2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 30607 OF 2006

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT DATED NIL. JUNE, 2006 IN OS NO.102 OF 2006 ON THE FILE OF THE COURT OF MUNSIFF, SULTHANBATHERY.

EXT.P2 : TRUE COPY OF IA NO.399 OF 2006 FILED BY THE PETITIONERS IN OS NO.102 OF 2006 ON 14.06.06.

EXT.P3 : TRUE OCPY OF COMMISSION REPORT DATED 24.6.06.

EXT.P4 : TRUE COPY OF ORDER DATED 1.8.06 OF THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY IN IA NO.399 OF 2006 IN OS NO.102/06.

EXT.P5 : TRUE COPY OF IA NO.654 OF 2006 FILED BY THE RESPONDENTS IN CMA NO.24 OF 2006 ON 5.8.06.

EXT.P6 : TRUE COPY OF OBJECTION DATED 18.8.06 FILED ON BEHALF OF THE PETITIONERS TO EXT.P5.

EXT.P7 : TRUE COPY OF ORDER DATED 30.9.06 ISSUED BY THE SUB JUDGE, SULTHANBATHERY IN IA NO.654 OF 2006 IN CMA NO.24 OF 2006.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 30607 OF 2006

AND

FAO No. 238 of 2007

Dated this the 9th day of August, 2007

JUDGMENT

Under challenge in WPC 30607 of 2006 is Ext.P7 interim order passed by the lower appellate court in CMA No.24 of 2006 staying the operation of an order of temporary injunction which had been passed by the trial court. The CMA filed by the respondent before the lower appellate court was directed against Ext.P4 order of injunction passed in favour of the petitioner. The effect of Ext.P7 was to render Ext.P4 injunction order inoperative. On hearing the initial submissions of counsel on 17.07.07, CMA No.24/ of 2006 was ordered to be withdrawn from the files of the Sub Court to this Court. Accordingly, on receipt of the records, the CMA was registered with this court as FAO No.238 of 2007.

2. I have heard counsel on either sides. It is seen that on admitting the Writ Petition this Court directed both sides to maintain status quo and restrained both sides from committing any act of waste on the property in question. Those directions are even now in currency.

3. Having regard to the submissions addressed before me by counsel, I am of the view that it is not necessary that this Court examines the merits of the rival contentions. It would suffice if the

parties continue to maintain status quo and are restrained from committing any acts of waste on the property. Accordingly, the Writ Petition and the FAO are disposed of issuing the following directions:

Ext.P4 order of injunction and Ext.P7 order of stay produced in the Writ Petition will stand substituted by an order directing both sides to maintain status quo in respect of the suit property as obtaining on the date of institution of the Civil Miscellaneous Appeal before the lower appellate court. Similarly, both sides are restrained from committing any acts of waste on the property till such time as the suit is disposed of. The learned Munsiff is directed to dispose of the suit on the basis of the evidence which comes on record at trial without being influenced by anything that has been stated in Exts.P4 or P7 and also the interim order of this Court dt.20.11.06. The learned Munsiff will dispose of the suit at the earliest and at any rate within a period of six months of receiving copy of this common judgment.

It is clarified that this Court has not expressed any opinion touching the merits of the rival contentions.

PIUS C. KURIAKOSE, JUDGE

btt